

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KATY LORENA
GRIMALDO-PRIETO

Petitioner-Plaintiff,

v.

Civ. No.5:25-cv-00815

PAMELA JO BONDI,
United States Attorney General;

KRISTI LYNN NOEM,
Secretary of the United States
Department of Homeland Security;

TODD M. LYONS,
Acting Director of United States
Immigration and Customs Enforcement;

SYLVESTER M. ORTEGA,
Field Office
Director for Detention and Removal,
U.S. Immigration and Customs
Enforcement

WAYMON BARRY, Warden,
Karnes County Detention Facility

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY;

Respondents-Defendants.

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241
AND COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

INTRODUCTION

On or about October 31, 2021, the United States Department of Homeland Security (“DHS”) encountered Petitioner after she entered the United States without inspection. During the encounter, DHS exercised its legally granted discretion to process and parole her under 8 U.S.C. § 1226(a) (standard detention to pursue removal proceedings) rather than under 8 U.S.C. § 1225(b)(expedited removal proceedings).¹ The evidence establishes this election through Petitioner's initial release on recognizance, service of a Notice to Appear to initiate proceedings under 8 U.S.C. §§ 1229, 1229a, a warrant for her detention and the complete absence of Forms I-867AB and I-860 required for expedited removal. *See Pet. Ex. 1.*

Relevant here, DHS re-detained Petitioner in June 2025. Upon her detention, she requested a custody redetermination hearing before an immigration court, which was her statutory right after DHS's election to initially process her under 8 U.S.C. § 1226(a) in 2021. *See* 8 U.S.C. § 1226(a)(2)(A). But despite her bond eligibility, DHS argued, and an Immigration Judge (“IJ”) found, Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b) despite documentation showing DHS had processed and released her under 8 U.S.C. 1226(a).² *See Pet. Ex. 1.*

Petitioner now respectfully requests that this Court order Respondents to release Petitioner, or, in the alternative, determine her eligibility for bond and require an additional bond hearing

¹ Notable, Petitioner timely and affirmatively filed for asylum during the period from 2021 until present. The application remains pending.

² The IJ erroneously applied *Matter of Q. Li* and held “[t]he respondent is an applicant for admission and, therefore, ineligible for release on bond. An applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under.... 8 U.S.C. § 1225(b) (2018) and is ineligible for any subsequent release on bond under...8 U.S.C. § 1226(a)(2018). *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).”

pursuant to 8 U.S.C. § 1226(a), as DHS's procedural decisions render mandatory detention under 8 U.S.C. § 1225(b) inapplicable.

CUSTODY

1. Petitioner is in the physical custody of Respondent SYLVESTER M. ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent WAYMON BARRY, Warden of Karnes County Detention Facility in Karnes City, Texas. At the time of the filing of this petition, Petitioner is detained at the Karnes County Detention Facility in Karnes City, Texas. The Geo Group contracts with the DHS to detain Respondents such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the instant petition and action under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, Cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331. Jurisdiction is also proper under 5 U.S.C. § 702 as Petitioner suffered a legal wrong from an agency action. This Court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *ET. seq.*

3. Venue properly lies within the Western District of Texas because all of the events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(b).

4. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

PARTIES

5. Petitioner is a national and citizen of Venezuela. She is currently detained at the Karnes County Detention Facility located at 409 FM 1144. Karnes City, TX 78118.

6. Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice (“DOJ”). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the Board of Immigration Appeals (“BIA” or “Board”). Respondent is named in her official capacity. Respondent’s address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.
7. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security (“DHS”), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Petitioner. Respondent is named in her official capacity. Respondent’s address is Department of Homeland Security, Washington, D.C. 20528.
8. Respondent TODD M. LYONS is the acting Director of the ICE within DHS, an agency of the United States. Respondent is responsible for the administration and enforcement of immigration laws. Respondent is named in his official capacity. Respondent’s address is 500 12th Street SW, Mail Stop 5900 Washington, D.C. 20536.
9. Respondent SYLVESTER M. ORTEGA is the Field Office Director for Detention and Removal, ICE, DHS. Respondent is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Pursuant to Respondent’s orders, Petitioner remains detained. Respondent is named in his official capacity. Respondent’s address is 1777 NE Loop 410 Floor 15, San Antonio, Texas, 78217.
10. Respondent WAYMON BARRY is the warden of the Karnes County Detention Facility in Karnes City, Texas. He is Petitioner’s immediate custodian and resides in the judicial district of

the United States Court for the Western District of Texas, San Antonio Division. Respondent is named in his official capacity. Respondent's address is 409 FM 1144, Karnes City, TX 78118.

11. DHS is a federal agency charged with administering statutes and regulations governing immigration pursuant to 6 U.S.C. §§ 111-115. Respondent's address is Department of Homeland Security, Washington, D.C. 20528.

STATEMENT OF FACTS

PETITIONER'S ENTRY AND INITIAL PROCESSING

12. Petitioner entered the United States without inspection on or about October 31, 2021. DHS detained Petitioner and elected to process and release her under 8 U.S.C. § 1226(a) upon her entry at or near Del Rio, Texas. *ee Pet. Ex. 1*. This election is conclusively established by three irrefutable facts: (a) DHS released her own recognizance on November 3, 2021, issuing a warrant of arrest and subsequently releasing her on a conditional parole under 8 U.S.C. § 1226(a)(2)(B); (b) DHS served a Notice to Appear for proceedings under 8 U.S.C. § 1229a; and (c) DHS never completed the required forms pursuant to 8 C.F.R. § 235.3(b)(2), Forms I-867AB or I-860, for expedited removal.

13. Indeed, the law grants DHS sole discretion to choose between expedited removal under 8 U.S.C. § 1225(b) and standard removal proceedings under 8 U.S.C. § 1229a, which triggers detention authority under 8 U.S.C. § 1226(a). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023) (For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under section 8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under 8 U.S.C. § 1229a (citations omitted); *see also Matter of D-J-*, 23 I&N Dec. 572, 572-76 (A.G. 2003) (DHS apprehended a respondent shortly after he entered the United States without admission or parole and the Attorney General reviewed

eligibility for release from custody under 8 U.S.C. § 1226(a) to process him for removal proceedings under 8 U.S.C. § 1229a) (quotes omitted).

14. Notably, DHS did not initiate nor comply with mandatory procedural requirements set forth in 8 C.F.R. § 235.3(b)(2) necessary to invoke expedited removal, including: (a) completion of sworn Form I-867AB statement; (b) service of Form I-860 with supervisory approval; and (c) adequate interpreter assistance. These procedural failures independently preclude application of 8 U.S.C. § 1225(b).

PROCEDURAL HISTORY OF REMOVAL AND BOND PROCEEDINGS

15. In June 2025, ICE detained Petitioner during a routine check-in with the agency. The agency subsequently transported Petitioner to the Karnes County Detention Facility.

16. Petitioner requested a custody review hearing with an IJ. On June 20, 2025, an IJ concluded Petitioner was “an applicant for admission” detained under 8 U.S.C. § 1225(b) and erroneously found her to be subject to mandatory detention applying *Matter of Q. Li*, 29 I. &N. Dec. 66.

17. ICE continues to unlawfully detain Petitioner at that facility, asserting that she is subject to mandatory detention provisions under 8 U.S.C. 1225(b).

LEGAL FRAMEWORK

DHS'S DISCRETIONARY AUTHORITY AND PROCEDURAL ELECTIONS

18. Federal law grants DHS broad discretion to choose between expedited removal under 8 U.S.C. § 1225(b) and standard removal proceedings under 8 U.S.C. § 1240 for individuals who could potentially qualify for either framework.

19. DHS's procedural election constrains all subsequent relief options and creates binding legal consequences. When DHS chooses standard removal proceedings, the agency must follow 8 U.S.C. § 1226(a) detention and release procedures.

20. Federal regulations establish procedural safeguards in 8 C.F.R. § 235.3 that serve as due process protection. Violations of these safeguards invalidate expedited removal determinations and preclude application of mandatory detention provisions.

***MATTER OF Q. LI* HAS LIMITED APPLICATION**

21. *Matter of Q. Li* establishes mandatory detention only after an alien has been validly placed in expedited proceedings 8 U.S.C. § 1225(b), which never occurred in Petitioner's case. The decision, however, creates no authority for applying mandatory detention where: (a) DHS elected alternative processing under 8 U.S.C. § 1226(a); or (b) DHS failed to complete formal requirements necessary to invoke 8 U.S.C. § 1225(b).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Federal law does not require exhaustion of administrative remedies before seeking habeas relief. Exhaustion is a prudential requirement that does not apply where: (1) administrative remedies would be futile; (2) the agency lacks jurisdiction or competence to grant relief; or (3) pursuing administrative remedies would cause irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992).

23. Exhaustion is futile because the IJ rendered a definitive legal ruling that *Matter of Q. Li* categorically bars bond eligibility for any individual who could potentially be characterized as an "applicant for admission," regardless of whether 8 U.S.C. § 1225(b) was properly invoked.

24. The BIA lacks competence to grant the relief sought. This case presents a pure question of statutory construction regarding which detention framework applies—an issue appropriate for federal court review under *INS v. St. Cyr*, 533 U.S. 289, 314-15 (2001).

25. Further administrative proceedings cause irreparable harm through prolonged unlawful detention. Each day Petitioner remains detained under the wrong statutory authority constitutes a continuing violation of her liberty interests. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

26. Federal courts routinely exercise habeas jurisdiction over immigration detention challenges without requiring exhaustion where the challenge goes to the legal basis for detention itself rather than the underlying removal proceedings. *Demore v. Kim*, 538 U.S. 510, 517 (2003).

CAUSES OF ACTION

COUNT ONE: INJUNCTIVE RELIEF

27. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 26 of this Petition.

28. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). “To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

29. Petitioner satisfies the criteria for preliminary injunctive relief under Federal Rule of Civil Procedure 65. First, she is substantially likely to prevail on the merits because DHS affirmatively

elected to process her under 8 U.S.C. § 1226(a), as demonstrated by her release on recognizance, service of a Notice to Appear, and the absence of forms required to invoke expedited removal. Second, continued detention causes Petitioner irreparable harm by depriving her of liberty based on an erroneous statutory framework, in violation of her due process rights. Third, the balance of equities tips sharply in her favor, as she faces unjustified detention while the government would incur minimal burden from providing a bond hearing or release. Finally, granting injunctive relief serves the public interest by ensuring that federal agencies adhere to statutory and constitutional requirements governing detention authority.

**COUNT TWO:
VIOLATION OF SUBSTANTIVE DUE PROCESS**

30. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 26 of this Petition.

31. Substantive due process protects against arbitrary and unjustified deprivations of liberty. In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute's purpose. *See Zadvydas v. Davis*, 533 U.S.690; *Demore v. Kim*, 538 U.S.523. When the government misapplies the statutory basis for detention, no legitimate justification exists, and due process is infringed. *Id.*

32. DHS affirmatively chose to process Petitioner under section 1226(a), demonstrated by her release on recognizance (§ 1226(a)(2)(B)), issuance of a Notice to Appear, and absence of expedited removal forms (I-867AB, I-860). By subsequently detaining her under section 1225(b), DHS did not provide her with the bond protections specified under § 1226(a), resulting in a statutory mismatch that affected the legal basis for her continued detention.

33. Respondents' actions violate Petitioner's substantive due process rights.

**COUNT THREE:
VIOLATION OF PROCEDURAL DUE PROCESS**

34. Petitioner re-alleges and incorporates herein by reference each and every allegation and argument contained in paragraphs 1 through 28 of this Petition.
35. Procedural due process “imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause.” *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The fundamental requirement of procedural due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Id.*
36. Petitioner was denied a statutorily mandated bond hearing under 8 U.S.C. § 1226(a). Due process requires accurate application of the governing legal standard before depriving an individual of liberty.
37. Respondents’ actions violate Petitioner’s procedural due process rights.

**COUNT FOUR:
ADMINISTRATIVE PROCEDURE ACT VIOLATION (5 U.S.C. § 706)**

38. Petitioner re-allege and incorporate herein by reference each and every allegation and argument contained in paragraphs 1 through 26 of this Petition.
39. Under 5 U.S.C. § 706(2)(A), agency action must not be “arbitrary, capricious, or otherwise not in accordance with law.” The APA requires DHS to follow statutory text and itself must assess that all prerequisites for invoking a specific detention authority—such as 8 U.S.C. § 1225(b)—are satisfied before applying it. *See Judulang v. Holder*, 565 U.S. 42, 52 (2011) (BIA’s rule was arbitrary and capricious where its methodology lacked reasonable relationship to statutory purpose)
40. Respondents detained Petitioner under § 1225(b) without performing or documenting the required statutory preconditions—failing to designate her an “applicant for admission,” find

inadmissibility under § 1182(a), initiate expedited removal, complete Forms I-867AB/I-860, provide interpreter assistance, or obtain supervisory signoff as required under 8 C.F.R. § 235.3(b)(2). This flip-flop from their own earlier determination under § 1226(a) ignored vital elements of the statute, making the detention decision both unreasonable and “not in accordance with law” under 5 U.S.C. § 706(2)(A).

41. The agency’s detention without adherence to statutory and regulatory procedures constitutes arbitrary and capricious agency action under § 706(2)(A) and unlawful action in excess of statutory authority under § 706(2)(C). Accordingly, the Court must set aside this defective detention determination and order Petitioner’s immediate release—or at minimum, remand for a proper § 1226(a) bond hearing consistent with statutory requirements and the APA’s mandate for reasoned, lawful decision-making.

**COUNT SIX:
ATTORNEY’S FEES**

42. Petitioner requests attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, pursuant to 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Issue an Order for Preliminary Injunctive Relief ordering Respondents release Petitioner or, alternatively, grant her a bond hearing with an Immigration Court.
2. Award Petitioner reasonable costs and attorney’s fees under the Equal Access to Justice Act (“EAJA”), as amended, pursuant to 28 U.S.C. § 2412.; and,
3. Grant any other relief which this Court deems just and proper.

Respectfully submitted, this 15 day of July 2025.

Dated: July 15, 2025

Respectfully submitted,

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ATTORNEY FOR PETITIONER

By: s/Francisco Alvillar
Francisco Alvillar
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VERIFICATION OF COUNSEL

I, Francisco Alvillar, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

s/Francisco Alvillar
Francisco Alvillar